

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 790 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

CHAMPABEN W/O CHANDULAL MANILAL

Versus

ABBASALI J HIDAYALI

Appearance:

MR SM BHATT for Petitioner
MR BHARAT J SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This is landlord's Revision under Section 29(2) of the Bombay Rent Act against concurrent judgments and Decrees of the trial Court as well as the lower Appellate Court.

2. Brief facts are that the suit for eviction of the defendant respondent - tenant was filed by the plaintiff - revisionist landlord on various grounds. The first was that the defendant tenant was in arrears of rent since 23.12.1977 which he did not pay despite service of notice of demand within a month of service of such notice. The next allegation was that the defendant has without permission of the landlord raised permanent structure in the demised premises. The next ground was that the plaintiff landlord reasonably and bonafide needed the suit premises for their own use and occupation. Another ground was that the defendant - tenant did not use the suit premises for the purpose for which it was let out for a continuous period of six months preceeding the date of institution of the Suit without any reasonable cause. Another ground was that the defendant was guilty of causing nuisance and annoyance to the neighbouring occupiers. The Suit was contested by the respondent tenant denying all these allegations. He raised dispute of standard rent as well.

3. The Trial Court fixed the standard rent at Rs.107/- p.m. The Trial Court further found that no decree for eviction could be passed on ground of tenant being in arrears of rent exceeding six months in view of dispute of standard rent; that the landlord failed to establish that the tenant raised permanent structure in the demised premises without written permission of the landlord; that the plaintiff failed to establish that the defendant did not use the premises for a continuous period of six months before institution of the Suit or that the defendant was guilty of causing nuisance and annoyance to the neighbouring occupier. The Trial Court further found that though the need of the landlord for the suit accommodation was genuine and bonafide yet the decree for eviction could not be passed because by passing such decree greater hardship will be caused to the tenant respondent. With these findings the Suit was dismissed.

4. The matter was taken up in Appeal. The tenant respondent filed cross objection also disputing the standard rent fixed by the trial Court. The trial Court dismissed the Appeal as well as the cross objections.

5. No revision has been filed by the tenant respondent against the direction of the lower Appellate Court rejecting the cross objection. Consequently the dispute of a standard rent is over and it was rightly fixed at Rs.107/- p.m. by the trial Court which was confirmed by the appellate Court.

6. So far as this revision is concerned it is a case of concurrent findings of fact recorded by the two courts below. I have examined the Judgment of the trial Court as well as the Appellate Court. I do not find that the findings recorded by the two Courts below are in any way contrary to law. On the other hand findings are based on proper appreciation of evidence on record.

7. The main ground for eviction was that the premise was reasonably and bonafide required by the landlord. The two Courts below concurrently recorded the findings that the premise was reasonably and bonafide required by the landlord. However, while examining Sec.13(2) of the Rent Act the two Courts below further found that in case the Decree for eviction is passed in favour of the landlord against the tenant, it is the tenant respondent who will suffer greater hardship. Consequently on this ground also the Decree for eviction was refused. That finding is also based on proper appreciation of evidence on record. Consequently there is no ground for interference in this Revision, hence the revision is liable to be dismissed.

8. The Revision is accordingly dismissed with no order as to costs.

sd/-

Date : August 18, 2000 (D. C. Srivastava, J.)

sas